

Decision **DRAFT DECISION OF ALJ WALKER** (Mailed 9/23/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA

Stewart Valley Homeowners Association,

Complainant,

vs.

SBC Pacific Bell,

Defendant.

Case 03-06-029
(Filed June 24, 2003)

OPINION DISMISSING COMPLAINT

1. Summary of Facts

Complainant represents a small community of 10 homes and 39 undeveloped lots in eastern California on the border between California and Nevada that is without landline telephone service. It seeks an order requiring SBC California (formerly Pacific Bell) to provide telephone service to the community.¹ While cellular telephone service is available in the area, the complaint alleges that cellular reception is spotty.

SBC California responds that Complainant is in an unfilled telephone service territory, and that the closest SBC California telephone facilities

¹ The complaint also seeks an order requiring SBC Nevada to provide the service, but this Commission lacks jurisdiction over SBC service in Nevada.

are 20 miles southwest of this community. SBC California states that it has advised Complainant that it has no plans to file for service in this area.

On July 24, 2003, SBC California moved to dismiss the complaint on the grounds that (1) the Commission cannot require a utility to expand its service into unfiled areas in which it has not dedicated itself (*Houchen v. Pacific Bell* (1997) 70 CPUC 2d 567), and (2) Complainant has failed to state an act or thing done or omitted to be done by a public utility in violation of any law, order or rule of this Commission (Rule 9 of the Rules of Practice and Procedure). SBC California states that it has sent Complainant copies of all decisions it cites in support of its motion to dismiss.

By Administrative Law Judge (ALJ) Ruling dated August 8, 2003, Complainant was invited to respond to the motion to dismiss, to state the legal underpinnings of its request for a Commission order, and to rebut the legal authorities cited by SBC California in its motion. By letter dated August 20, 2003, Complainant argues that telephone service could be extended from nearby SBC Nevada facilities. It states that its power supply derives from Nevada facilities transferred by agreement at stateline by Southern California Edison Company. The Commission would entertain an application by SBC California to enter into a similar agreement with SBC Nevada if service of that nature were feasible, but no such agreement is before us.

2. Discussion

The gravamen of the complaint before us is SBC California's refusal to provide telephone service to individuals who reside in an unfiled service territory in California. Generally speaking, in the absence of federal or state law granting us such authority, the Commission cannot compel a telephone utility to extend service to an unfilled territory unless the utility is willing to serve such

extended area. (*Houchen v. Pacific Bell, supra.*) The California Supreme Court has held that, in the absence of an enabling statute, the Commission cannot require utility management to expand the utility's service into areas in which the utility has not dedicated itself. (*Hollywood Chamber of Commerce v. Railroad Commission* (1923) 192 Cal. 307.)

The Commission arguably does have authority to direct such service where a community has successfully applied for federal or state grants to finance telecommunications service. For example, under the recently enacted Rural Telecommunications Infrastructure Grant Program, codified at Pub. Util. Code § 276.5, unserved communities may apply for grants of up to \$2.5 million for the construction of telecommunications infrastructure. The Commission has established eligibility criteria for community-based groups to qualify to apply for such grants, and it has established interim grant administration rules. (*See Interim Opinion* (2003) D.03-09-071.) Similarly, under certain conditions not applicable here, the Federal Communications Commission and this Commission have authority to direct an "eligible telecommunications carrier" in providing basic telecommunications service to an unserved community. (*See* 47 U.S.C. 214(e)(3).)

If it has not already done so, complainant here may wish to explore the developing grant provisions directed by Pub.Util.Code § 276.5. The text of D.03-09-071 and its underlying Order Instituting Rulemaking 03-02-034 are available through the Commission's web site at www.cpuc.ca.gov., under the designations for "Official Documents" and "Proceedings."

No federal or state statute dealing with service to the Stewart Valley community is at issue here. Without such authority, the complaint seeks relief that this Commission is not empowered to provide. Moreover, the complaint

fails to show or allege that SBC California violated any rule of law or that it has violated an order or rule of this Commission.

Accordingly, the complaint must be dismissed. (*See, e.g., Young v. Pacific Bell* (1996) 67 CPUC2d 634, 637.)

3. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were filed. No comments were received.

4. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Glen Walker is the assigned ALJ in this proceeding.

Findings of Fact

1. SBC California is a telephone public utility within the control and regulation of this Commission.
2. Complainant represents a small community of 10 homes and 39 undeveloped lots in an area of eastern California on the California-Nevada border.
3. Complainant is in an unfilled telephone service territory.
4. SBC California is unwilling to extend its service territory to serve Complainant.

Conclusions of Law

1. Unless otherwise authorized by federal or state statute, the Commission has no jurisdiction to assign an area to a public utility, thereby extending the utility's service territory, unless the utility is willing to serve such extended area.
2. The complaint fails to state a cause of action for which the Commission has jurisdiction to issue a remedy.

3. The complaint fails to allege that SBC California violated any rule of law or that it has violated an order or rule of this Commission.

4. Absent any issue of law or fact, no public hearing is necessary.

O R D E R

IT IS ORDERED that:

1. SBC California's motion to dismiss this complaint is granted.
2. Case 03-06-029 is closed.

This order is effective today.

Dated _____, at San Francisco, California.